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Summary of Comments on the NPDES General Permit for Wastewater Lagoons located in Indian Country

Comments were received from the Wind River Environmental Quality Commission (WREQC), the South Dakota Department of Environment and Natural Resources (SDDENR), the Fort Peck Tribes, the Confederated Salish and Kootenai Tribes of the Flathead Nation, and an individual citizen from Montana. A summary of the comments and the responses to those comments are given below:

1. **Comment:** South Dakota disagrees that all "trust lands" in South Dakota are automatically Indian country.

Response: EPA maintains the definition of Indian country as described in its public notice of its General Permit in the October 31, 2003 Federal Register. Further explanation of this interpretation of Indian country can be found at 67 Fed. Reg. 45684, 45686 (July 10, 2002).

2. **Comment:** South Dakota questions whether the general permit will be protective of South Dakota's water quality standards.

Response: In Indian country, State water quality standards do not directly apply. This includes state adopted water quality based-effluent limits, such as the State of South Dakota's limit for Total Suspended Solids for fisheries. In South Dakota, no tribe has been granted "treatment as a State" for the purposes of water quality standards; thus, EPA retains the role of certifying that limits protect uses and standards. At the present time, there are no water quality standards for Indian country within South Dakota. Therefore, EPA will evaluate the uses that are occurring at and downstream from the proposed discharge and include additional limits and /or monitoring as needed to protect those uses. As there are no standards, there is no process for determining Total Maximum Daily Loads (TMDL) or conducting antidegradation reviews. EPA will also consider State Water Quality Standards when determining necessary additional limits and/or monitoring and will assure that State standards are met at the State/Indian country boundary. On a monthly basis, EPA will post on its web site all persons covered under the general permit and their individual authorizations. These individual authorizations will contain any additional requirements necessary to protect uses or downstream standards. If the Tribe,



State, discharger, or any other party, believes that insufficient or inappropriate limits and/or monitoring has been required of any general permit authorization, that party may petition EPA to rescind coverage under the general permit and issue an individual permit to that person.

3. **Comment:** South Dakota raises the issue of whether EPA may include additional limits and/or monitoring in the general permit authorizations without further public participation.

Response: EPA is noticing its intent to do this by this public notice of this general permit. EPA believes that this is sufficient if this condition and permit is issued and survives all challenges. Further, if the State, the permittee, or any other party, believes that insufficient or inappropriate limits and/or monitoring has been required in any general permit authorization, that party may petition EPA to rescind coverage under the general permit and issue an individual permit to that person.

4. **Comment:** South Dakota contends that under 40 CFR §122.28(b), the Director may not cover a person unless that person submits a written notice of intent (NOI) to be covered by the general permit.

Response: 40 CFR §122.28(b)(2) specifically states that a discharger who does not submit an NOI may be covered when the Director notifies the discharger that it is covered by the general permit. 40 CFR §122.28(b)(2)(vi) provided further guidance on this matter and says that the discharger may request an individual permit rather than be covered under the general permit.

5. **Comment:** The Fort Peck Tribes conditioned their 401 Certification on being given notice of permit activities within their reservation.

Response: We have changed all of the permits to clarify and require submission of copies of the following items to the appropriate tribal authority:

- a. the NOI;
- b. Discharge Monitoring Reports; and
- c. all other notifications, reports, and requests.

6. **Comment:** Wind River Environmental Quality Commission (WREQC) was concerned that EPA would issue other General Permits to inappropriate industries/categories.

Response: EPA will confer with the WREQC before proposing other general permits on the Wind River Reservation (as we did with this permit). As mentioned above, once a general permit is issued, Tribes, States, individual, or the discharger may request that a facility not be covered under a general permit and be covered under an individual permit.

7. **Comment:** Wind River Environmental Quality Commission (WREQC) was concerned that individual permits might present a better means of addressing water quality issues surrounding some facilities.

Response: At the present time, there are no water quality standards for the Wind River Reservation. Therefore, EPA will evaluate the uses that are occurring in and around the proposed discharge and include additional limits and /or monitoring as needed to protect those uses. EPA will also consider State Water Quality Standards when determining necessary additional limits and/or monitoring and will assure that State standards are met at the State/Indian country boundary. These individual authorizations will contain any additional requirements necessary to protect uses or downstream standards. If the Tribe, State, discharger, or any other party, believes that insufficient or inappropriate limits and/or monitoring has been required of any general permit authorization, that party may petition EPA to rescind coverage under the general permit and issue an individual permit to that person.

8. **Comment:** Wind River Environmental Quality Commission (WREQC) requests that the Wyoming general permit be reopened if EPA approves Water Quality Standards for the Wind River Reservation.

Response: Part 8.15, Reopener Provision, of the general permit states that the permit may be reopened and modified (following proper administrative procedures) to include the appropriate effluent limitations (and compliance schedule, if necessary), or other appropriate requirements if water quality standards of the receiving water(s) to which the permittee discharges are modified in such a manner as to require different effluent limits than contained in this permit.

9. **Comment:** The Confederated Salish and Kootenai Tribes of the Flathead Nation request additional information be required as part of the NOI regarding distances to nearest waterbody and depth to high groundwater for both lagoons and land treatment areas.

Response: these changes have been made to all the general permits.

10. **Comment:** the Confederated Salish and Kootenai Tribes of the Flathead Nation requested that only Category 3 (No Discharge) facilities be permitted by the general permit on the Flathead Reservation.

Response: As in the previous permit, only Category 3 (No Discharge) facilities be will authorized for the Flathead Reservation.

11. **Comment:** An individual citizen from Montana asked a number of questions regarding the land application requirements of the general permit. These included:
- a. Who is going to review and approve the land application plan?

- b. Why is approval not specifically required prior to utilizing the land application plan? The permit only says the permittee shall have a written plan, not that it has to be approved by any regulatory agency.
- c. Why does the permit not specifically forbid land application during the "non-growing" season?
- d. Why is the potential for discharge to ground water not addressed in the land application plan? and
- e. Why are the locations of nearby wells or other drinking water supplies not required to be delineated in the land application plan?

Response: In this proposed General Permit, EPA has included requirements for land application when used in conjunction with lagoon systems. The Clean Water Act gives EPA authority to permit discharges to surface waters but does not speak to protection of groundwaters. (Note: States generally have authority to address activities which impact groundwaters under separate state authorities). Our goal in this General Permit is to control discharges to surface water and our permit requirements address that aspect of land application.

EPA, in consultation with the affected Tribe, may review land application plans, but we do not approve such plans. We will expect the discharger will abide by its plan and EPA will ensure that surface waters are not impacted by the discharger's actions. As noted above, we intend to modify the NOI requirements to obtain more information regarding groundwater levels and uses in and around the disposal site.

12. **Comment:** The individual citizen from Montana asked a number of questions regarding the lack of water quality based limits for Fecal coliform, E. coli, and ammonia.

Response: Except for the Flathead and the Fort Peck Reservations, water quality standards have not been adopted in Indian country (See Comment and Response 2).

For the Flathead Reservation, the General Permit only authorizes the "No Discharge" option 3. Since no dischargers are allowed, specific limitations are not required.

For the Fort Peck Reservation, EPA recognizes that it may be necessary to develop a TMDL as there are approved water quality standards applicable on the Fort Peck Reservation. However, there were no authorizations issued under the previous General Permit. If a discharger requests to be covered under the new General Permit, EPA will evaluate the request and determine if the discharge will be to a water quality limited stream. If the discharge is determined to be on a water quality limited stream, EPA will initiate an individual permit action and conduct a TMDL evaluation.

13. **Comment:** The individual citizen requested that EPA explain what went into the BPJ determination for oil and grease.

Response: When EPA Region 8 began issuing permits for wastewater discharges in the early 1970s, there were very few technology-based effluent limitations promulgated. Under section 402(a)(2) of the Clean Water Act, EPA is required to use its best professional judgement (BPJ) to determine effluent limitations in the absence of promulgated effluent limitations. To determine an effluent limitation for oil and grease, the NPDES permit writers looked at the data on the concentrations of oil and grease in the effluents from wastewater treatment systems that were properly designed and operated.

For such facilities it was found that the effluent concentrations of oil and grease were less than 10 mg/L most of the time. This was especially true for municipal wastewater treatment systems. Since then NPDES permit writers in Region 8 have used 10 mg/L as an effluent limitation for oil and grease unless there is a promulgated effluent limitation for oil and grease (e.g., the effluent limitation guidelines for petroleum refineries (40 CFR Part 419)).

The State of Colorado's Regulations for Effluent Limitations includes a 10 mg/L limitation on oil and grease. Those regulations were promulgated after Region 8 started using 10 mg/L as an effluent limitation for oil and grease.

This "historical" use of 10 mg/L limitation for oil and grease also has been carried forward in renewed permits to prevent backsliding. In converting individual permits to general permits the limits have been carried forward also.

14. **Comment:** The individual citizen also asked why the percent removal secondary treatment standards are not applied or mentioned in the fact sheet?

Response: It has been the experience of Region 8 that there are some practical problems associated with trying to determine the actual percent removals of biochemical oxygen demand (BOD) and total suspended solids (TSS) in small municipal wastewater lagoon systems. The detention times in the lagoon systems usually range from several weeks to several months. When there is a seasonal variation in the strength (i.e., concentration of BOD₅ and total suspended solids (TSS)) of the influent, the lag time between when the influent enters the lagoon system and when that wastewater leaves the lagoon system makes it difficult to make a valid comparison between influent concentrations and effluent concentrations.

Another problem is the types of samples that should be collected. Generally a grab sample of the effluent will be representative of the effluent quality from a lagoon system, making it unnecessary to collect composite samples. To help reduce the costs of monitoring, the permits generally specify grab samples rather than composite samples for effluent monitoring of BOD₅ and TSS. However, because of the typical variation in the strength and flow rates of the influent over a 24-hour period, it usually is necessary to take a 24-hour flow weighted composite sample to get representative data of the average influent concentrations of BOD₅ and TSS. This is especially true for small systems where

the influent quality can vary considerably during a 24-hour period. Many of the small lagoon systems located within Region 8 do not have influent flow measuring capabilities. This makes it difficult to do a flow-weighted composite sample, which is usually needed in order to obtain a representative sample of a municipal influent. Depending on when it was collected, a grab sample may give a value that is significantly higher or lower than the flow-weighted concentration.

All things considered, Region 8 has found it best not to include the 85 percent removal requirements in permits for municipal wastewater lagoon systems, especially small ones.

July 12, 2004